CHAN KAI PHENG

v.

RIO TRADERS LTD.

HIGH COURT MALAYA, PENANG
GUNN CHIT TUAN J
[CIVIL APPEAL NO. 11 OF 1980]
11 OCTOBER 1983

LAND LAW: *Tenancy - Unlawful occupation - Delivery of vacant possession - Equitable interest acquired - Application of equitable estoppel.*

This was an appeal against an order to deliver up vacant possession of land. The respondent company bought the land in 1963/4. There was a house to the land belonging to one Tan Bah Chooi who sold the house to the appellant in November 1965. The appellant had obtained from the vendor a receipt for ground rent issued by Malaya Rubber Works which was owned by the respondent company. The respondent company had since refused to accept any ground rent. The appellant had carried out repairs to the house. The house had been built in 1953 and in 1963, the respondent had bought it with all existing encumbrances. The respondent argued that the appellant was a trespasser and or a mere licensee and the appellant contended that he was a tenant and had acquired an equitable interest.

Held:

[1] Since there was no covenant against assignment of the ground tenancy the assignment to the appellant was valid.

[2] Equity was not lost by the changes made to the house nor by the changes in its ownership therefore equitable estoppel operated.

[3] The appellant had obtained a lawful tenancy coupled with an equity which could not be determined by a notice to quit after eight years.

[Appeal allowed with costs.]

Case referred to:
Mok Deng Chee v. Yap See Hoi & Ors. [1981] 2 MLJ 321; [1981] CLJ (Rep) 69

For the appellant - C. V. Prabhakaran; M/s. C. V. Prabhakaran & Co.
For the respondent - Tang Khye Kian with Tan Chin Eng; M/s. Zakaria & Co.

JUDGMENT

Gunn Chit Tuan J:

This was an appeal by one Chan Kai Pheng (hereinafter referred to as "the defendant") against the order of the learned Magistrate at Butterworth for delivery of vacant possession to Rio Traders Limited (hereinafter referred to as "the plaintiff company") of a portion of a piece of land known as Holding No. 685 Mukim 14, Province Wellesley, with a house built thereon (hereinafter referred to as "the said portion"). It was the contention of the plaintiff company that the defendant had unlawfully and without permission or consent entered into and still occupied the said portion. Alternatively, it was contended that the defendant was a mere licensee as he never at any time paid any rent to the plaintiff company.

According to the manager of the plaintiff company (PW1) the land in question was bought by the plaintiff company in 1963/4. There was then a house belonging to one "Ah Yu" who was a ground tenant and whose real name must be Tan Bah Chooi as shown in a Deed of Sale executed by him in favour of the defendant on 2 November 1965.

The evidence of the defendant, as recorded by the learned Magistrate, was that when he bought the house in 1965 nobody raised any objections and the former house owner gave him a receipt for ground rent which was issued by Malaya Rubber Works which, as admitted by the manager of the plaintiff company under cross-examination, was owned by the plaintiff company. According to the defendant he tried to pay ground rent to the plaintiff company which refused to accept it. He made some repairs to the house and did seek the consent of the plaintiff company for occupation of the said portion. On this point, however, the learned Magistrate, who had the benefit of seeing and hearing the witnesses, was inclined to believe the manager of the plaintiff company and found that no consent was in fact given to the defendant. On the evidence adduced before her, the learned Magistrate found that the plaintiff company had proved that the defendant was a trespasser, thus resulting in the defendant's appeal on the ground that the learned Magistrate had failed to consider that the defendant was a tenant who had acquired an equitable interest in the said portion.

As regards the learned Magistrate's finding that the defendant was a trespasser, learned counsel for the defendant, Mr. Prabhakaran, pointed out that the house which the defendant had bought from the said Ah Yu in 1965 was actually built in 1953 by one Gopal Singh (deceased), who was the husband of one Gian Kaur (PW2), with the permission and consent of the previous landowner and that the plaintiff company had bought the land in question in 1963 together with all existing encumbrances. On the question whether the defendant had acquired an equitable interest in the said portion it was the submission of Counsel for the defendant that he was a tenant and not a licensee who had acquired an equitable interest in the said portion and that the plaintiff company was estopped from denying it. He also pointed out that the Courts in this country had applied the English doctrine of equitable estoppel in a large number of cases. He quoted a few of those cases and it is only necessary for the purposes of this appeal to refer to the recent Federal Court case of *Mok Deng Chee v. Yap See Hoi & Ors.* [1981] CLJ (Rep) 69 in which case it was held *inter alia* that it must be presumed that the house in that case had been built with the approval or at least without the objection of the previous owner and the expenditure involved in its construction raised an equity, making the tenant a tenant with an equitable estoppel; the equity was not lost by the changes made to the house nor by the changes in its ownership. The fact that the old house was demolished and that a new one was built without the consent of the respondent, did not in any way affect the equitable estoppel of the appellant; and as the appellant's tenancy was coupled with an equity it could not be determined by a bare notice to quit and therefore there ought to be judgment for the appellant. In that case Salleh Abas F.J. (as he then was) said as follows:-

> The law of tenancy coupled with an equity or simply an equitable estoppel arose from the speech of Lord Kingsdown in *Ramsden v. Dyson* [1866] LR 1 HL 129 in which his Lordship referred to the principle as irrevocable licence. This principle was accepted and applied by the Privy Council in *Plimmer v. The City of Wellington* [1884] 9 AC 699. Finally it received its judicial refinement in *Inwards v. Baker* [1965] 1 All ER 446, 448. In this case Lord Denning M.R. defined the concept as follows:-
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> > It is quite plain from these authorities that, if the owner of land requests another or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with equity ...

> that the equity arising from the expectation of land does not fail .. The Court can look at the circumstances and see whether there is any equity arising out of the expenditure of money.

The principle is also known as equitable estoppel, because the landowner whose conduct has raised an expectation of his tenant of being allowed to stay on and thereby inducing him to spend money in respect of the tenancy is prevented from taking any action contrary to that expectation.

In the development of our law this principle was recognised as long ago as 1916 in the case of *M.P.R.L. Karuppan Chetty v. Suah Thian* [1916] 1 FMSLR 300. It was applied by Chang Min Tat J., as he then was, in *Devi v. Francis* [1969] 2 MLJ 169. Finally it became a settled law as a result of decision of the Federal Court in *Yong Tong Hong v. Siew Soon Wah & Ors.* [1971] 2 MLJ 105 FC which decision was subsequently confirmed by Privy Council *Yong Tong Hong v. Siew Soon Wah & Ors.* [1973] 1 MLJ 133 PC. Its practical application was demonstrated in the decision of Syed Othman J., whose judgment was confirmed by the Federal Court in *Tan Swee Ho Company Limited v. Ali Hussein Bros.* [1980] 1 MLJ 89; [1980] 2 MLJ 16 and in the decision of Abdoolcader J. in *Wong Yen Lin v. Liew Tham Soon & Ors.* [1980] 2 MLJ 99.

Mr. Tang Khye Kian, leading Counsel for the plaintiff company stated that the vital issue was whether the original tenant, Ah Yu @ Tan Bah Chooi, was in a position to assign the ground tenancy to the defendant. It was his submission that he could not do so and that the plaintiff company was against the assignment and did not give its consent. He also contended that even if the defendant was not a trespasser, he was at the most a licensee and his licence was lawfully terminated by a notice to quit dated 25 April 1973, which incidentally was nearly eight years after the defendant had bought the house from the former ground tenant, Ah Yu.

It was also the submission of Counsel for the plaintiff company that the defendant enjoyed no equity at all. He too referred to the same cases, including the Federal Court case of *Mok Deng Chee v. Yap See Hoi & Ors.*, which were quoted by Counsel for the defendant earlier on and submitted that they did not apply to the present case. Counsel pointed out that in *Mok Deng Chee's* case, the landlord after purchasing the land from the previous owner accepted the tenant who was in fact already a tenant on the land and had built a house thereon. He also pointed out that in the present case the original tenant only moved out after the plaintiff company had bought the land in question and that the defendant had moved in without approval of the plaintiff company. He concluded that the defendant was therefore a trespasser enjoying no equity and urged the Court to dismiss his appeal.

With respect to the contention of Mr. Tang, there was no evidence in this case that there was any covenant against assignment of Ah Yu's ground tenancy and the decision in *Mok Deng Chee v. Yap See Hoi & Ors.* in which the Federal Court held that "the equity was not lost by the changes made to the house nor by the changes in its ownership" is applicable to this. It would therefore appear from that decision that after the defendant had bought the house from the ground tenant, Ah Yu, the latter's equity which made him a tenant with a equitable estoppel was not lost by the change of ownership of the house to the defendant. The defendant had therefore obtained a tenancy coupled with an equity which would not be determined by a notice to quit served on him after his presence on the said portion had been tolerated for nearly eight years since he bought the house from the former ground tenant. In the circumstances of the case I therefore allowed the defendant's appeal with costs.

Also found at [1984] 1 CLJ 92